



PUBLIC NOTICE

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**MEDIA BUREAU ISSUES LIMITED MODIFICATION TO *EX PARTE* REQUIREMENTS FOR
BROADCASTERS FILING NOTICES
IN THE EXPANDING THE ECONOMIC AND INNOVATION OPPORTUNITIES OF
SPECTRUM THROUGH INCENTIVE AUCTIONS PROCEEDING**

GN Docket No. 12-268

On October 2, 2012, the Commission released a Notice of Proposed Rulemaking initiating the broadcast television spectrum incentive auction process.¹ Since the initiation of this proceeding, broadcasters have been meeting with Commission staff to discuss various incentive auction matters. Under Section 1.1206(b)(1) of the Commission's *ex parte* rules, after such oral presentations, participants must file a written notice listing all persons in attendance or who otherwise participated.² By this Notice, the Media Bureau provides guidance for broadcasters who wish to file *ex parte* notices in this proceeding without disclosing their identities.

We want to encourage those broadcasters interested in auction participation to raise issues of specific concern to them regarding the incentive auction process so that we may develop a robust record to assist us in devising auction-related rules. At the same time, we recognize that broadcasters may have legitimate reasons for not wanting to disclose their potential interest in reverse auction participation. We believe that allowing anonymity in this limited circumstance will encourage broadcasters to engage in frank discussions with Commission staff, promoting informed participation in the reverse auction and a more robust Commission decision-making process. Participants in the reverse auction will submit bids to exit an ongoing business, or to make significant changes to that business (e.g., by changing the channels on which they operate or agreeing to share a channel).³ Section 6403(a)(3) of the Spectrum Act recognizes the potential competitive sensitivities of the information that such existing licensee bidders provide to the Commission in this context.⁴

¹ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012) (*NPRM*).

² See 47 C.F.R. § 1.1206(b)(1) (providing the requirements for summaries of *ex parte* meetings in permit-but-disclose proceedings such as the broadcast television spectrum auction proceeding initiated by the *NPRM*).

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6403(a)(2) (identifying eligible relinquishments of broadcast television spectrum usage rights for the reverse auction), 47 U.S.C. § 1452, 125 Stat. 156 (2012) (Spectrum Act).

For the reasons stated above, and under the authority granted in Section 1.1200(a) of the Commission's Rules,⁵ we modify Section 1.1206(b)(1) to allow broadcasters who may be interested in reverse auction participation to file an *ex parte* notice without disclosing their identities when they participate in meetings to discuss issues in this proceeding. Reflecting the Commission's general preference for disclosure and transparency in its rule making proceedings,⁶ however, we request that such notice provide sufficient basic information to better allow the FCC and the public to understand and evaluate the positions taken during such an anonymous *ex parte* presentation. This information may include, for example, the market tier(s) in which its station(s) operates and whether its station(s) is network-affiliated or independent.⁷ Further, we remind broadcasters that they must otherwise continue to follow the *ex parte* rules, including providing all data presented and arguments made during an *ex parte* presentation, except with respect to the provision of specific information that would reveal the filer's identity, *e.g.*, the call sign of its station.

For further information, contact Shaun Maher of the Media Bureau, Video Division at Shaun.Maher@fcc.gov or (202) 418-2324. Press contact: Janice Wise, Janice.Wise@fcc.gov, (202) 418-8165.

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⁵ See 47 C.F.R. § 1.1200(a) (specifying that “[w]here the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice”).

⁶ For example, the Commission has stated a general preference for disclosure of the identity of commenters in Commission rulemaking proceedings, and a proceeding seeking comment on whether the Commission should adopt enhanced disclosure requirements for parties filing comments remains outstanding. *See Amendment of the Commission's Ex Parte Rules*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4517, 4526, 4539 ¶ 80 (2011) (*Ex Parte FNPRM*) (“it would serve the public interest to have a disclosure requirement that addresses . . . [the] problem . . . [of hidden interests]”).

⁷ The Media Bureau adopted a similar approach for the filing of anonymous comments and replies in this proceeding. In a Public Notice issued in December 2012, the Bureau requested that any broadcaster represented by counsel wishing to file anonymously pursuant to Section 1.419 of the Commission's Rules provide basic information about itself to “enable the Commission and the public to understand and evaluate the positions” taken in the filing. *See* “Media Bureau Releases Additional Guidance to Broadcasters Wishing to File Anonymous Comments in the Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions Proceeding, *Public Notice*, 27 FCC Rcd 15829 (MB 2012).